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| EXAMINER | | | | |
| TINKLER, MURIEL S | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

usptomailnyc@kslaw.com

Office Action Summary

Application No.

10/788,506

Applicant(s)

WENDER, DAVID

Examiner

MURIEL TINKLER

Art Unit

3691

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 April 2010.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 and 36-68 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-32 and 36-68 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
4) ☐ Interview Summary (PTO-413)
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____
Paper No(s)/Mail Date _____

DETAILED ACTION

This application has been reviewed. The status of the claims are as follows: claims 1-32 and 36-68 were previously pending; claims 23 and 28 have been amended; no claims have been cancelled or added; therefore, claims 1-32 and 36-68 are currently pending and have been examined. The rejection(s) and objection(s) are as follows.

Response to Arguments

1. Applicant's arguments, see pages 25-27, filed April 12, 2010, with respect to 35 USC 112 Rejection(s) of claims 11, 18, 19, 47, 53 and 54, have been fully considered and are persuasive. The Therefore, the 35 USC 112, first paragraph Rejection(s) of claims 11, 18, 19, 47, 53 and 54 has been withdrawn.
2. Applicant's arguments, see page 28, filed April 12, 2010, with respect to the rejection(s) of claim(s) 1-32 and 36-68 under 35 USC 103 have been fully considered and are not persuasive. The Applicant argues that the cited prior art does not disclose, "a first option comprising an option code and a second option comprising an option code". As stated in the previous Office Action, mailed on March 3, 2010" It is completely unclear to the Examiner how an option can be place on an exchange without an optioncode/identifier. As disclosed in the specification of this very application, it is stated that, "an optioncode is generally a two letter code designated by the Exchange on which the option trades" (see page 2, lines 1-5). The Applicant also goes on to state, in the specification, (within the same paragraph) the New York Mercantile Exchange uses such a

code system. If the Exchange designates the "optioncode" then why would it be necessary for the Lange reference to either provide their own "optioncode" or explicitly state the use of an optioncode, if in fact Lange discloses the use of an Exchange. And, Lange discloses the use of an "exchange" in paragraphs [0035]-[0036], [0040] and [0043] among other places. In any case, the Examiner has added the Melkomian et al. (US PG Pub. 2002/0128952) reference which explicitly states the use of options and options spreads within the New York Mercantile Exchange. Therefore, as described by the Applicant's specification, said options are given optioncodes by said exchange.

3. Applicant's arguments filed April 12, 2010 have been fully considered but they are not persuasive.
4. Regarding the argument, on page 29, that the prior art does not disclose the elements (a) through (h) of claim 1. The Examiner disagrees. As shown in the Non-final Rejection, Lange and Melkomian et al. discloses these elements, see page 8 and paragraphs 14-15 of the Office Action mailed on March 3, 2010.
5. The Applicant argues that the prior art does not disclose claims 12, 20, 47 or 55. The Applicant disagrees. As shown in the Non-final Rejection, Lange and Melkomian et al. discloses these elements, see page 8 and paragraphs 14-15 of the Office Action mailed on March 3, 2010.
6. Applicant's arguments, see page 29, filed April 12, 2010, with respect to the rejection(s) of claim(s) 23 and 58, have been fully considered and are not persuasive. Lange and Melkomian et al. discloses these elements, see page 8 and paragraphs 14-15 of the Office Action mailed on March 3, 2010.

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7. The Applicant argues that the prior art does not disclose, "determining a type of option spread". The Examiner disagrees. Lange discloses determining a type of option spread in paragraph 783.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-32 and 36-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lange (US 2002/0147670) in view of Melkomian et al. (US PG Pub. 2002/0128952), hereafter referred to Lange and Melkomian respectively.

10. Regarding claims 1, 11, 12, 19, 20, 23, 36, 46, 47, 54, 55 and 58, Lange discloses: offering a digital option spread in paragraph 797; that option selling is common place and well known in the art in paragraph 803; determining the type of option spread based on comparing a first option spread to a second option spread (that defines a combination of buy/sell indicators) in paragraph 783; the use of computer program code in paragraph 319 and 320.

11. While, Lange discloses the use of an "exchange" in paragraphs [0035]-[0036], [0040] and [0043] among other places. Lange does not disclose the use

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of the New York Mercantile Exchange, as disclosed in the specification of this application. The New York Mercantile Exchange assigns an "optioncode" to an options. The Examiner has added the Melkomian et al. (US PG Pub. 2002/0128952) reference which explicitly states the use of options and options spreads within the New York Mercantile Exchange. Therefore, as described by the Applicant's specification, 'said options' are given optioncodes by said exchange. Additionally, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to include the use of "optioncodes" within the Lange reference because it would allow the user to identity the options available to be traded.

12. Regarding claims 2, 13, 37 and 48, Lange discloses the calculation of an option spread in paragraph 806.

13. Regarding claims 3, 14, 38 and 49, Lange discloses naming an option spread (binary/digital options) in paragraph 33.

14. Regarding claims 4, 5, 15, 25, 39, 40, 50 and 60, Lange discloses the use of sensitivity analysis calculations in paragraph 745 and 866.

15. Regarding claims 6, 16, 41 and 51, Lange discloses the act of displaying the price and name in figure 2 (elements 100, 160, 170, 190 and 200).

16. Regarding claims 7-9, 17, 42-44 and 52, Lange discloses sending information to the display device in figure 6.

17. Regarding claim 10, 18, 45 and 53, Lange discloses an input device in figure 2 (element 240).

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18. Regarding claims 21, 26, 56 and 61, Lange discloses a display with an x and y axis in figure 6 (element 503).

19. Regarding claims 22 and 57, Lange discloses: the use of real-time in paragraph 44 and varying time periods in paragraph 110; and, the use of software in paragraphs 748, 817 and 996.

20. Regarding claims 24 and 59, Lange discloses the act of receiving a positive or negative change in quantity in paragraphs 623 and 758.

21. Regarding claims 27 and 62, Lange discloses saving an option spread to a watch list (HTML interface) in figure 6.

22. Regarding claims 28-30 and 63-65, see the rejection of claim 23 above. More specifically, these claims discuss the process of instructing a sign change which reverses the sign of the provided quantity in the process of claims 223 and 68. This sign change does not take place for claims 23 and 58, as explicitly stated in the specification on page 14, "It should be noted that if the option count was not greater than 1 in step 508, the invention would ignore the input in step 510." The option count is not greater than zero because, as shown in claims 23 and 58: each grid represents a single option code and a set of selectable boxes; the user receives a selection of boxes comprising [the same] optioncode.

23. Regarding claims 31, 32, 66 and 67, Lange discloses that market based hedging is well known in the art in paragraph 11 and the use of hedging with respect to stock price in paragraph 216.

24. Regarding claim 68, Lange discloses: a computer system (figure 1); a processor (paragraph 71); computer readable medium according to claim 68 (see

the rejection of claim 58 above); and, the processor configured to execute program code stored on said computer readable medium (see paragraph 71).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **MURIEL TINKLER** whose telephone number is (571)272-7976. The examiner can normally be reached on Monday through Friday from 8:30 AM until 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571)272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alexander Kalinowski/
Supervisory Patent Examiner, Art
Unit 3691

/M. T./
Examiner, Art Unit 3691